



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 18931256

Date: SEP. 07, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition), and the matter is before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates, among other requirements, that they are a person of good moral character. Section 204(a)(1)(A)(iii)(II)(bb) of the Act; 8 C.F.R. § 204.2(c)(1)(F). U.S. Citizenship and Immigration Services (USCIS) evaluates a VAWA petitioner's claim of good moral character on a case-by-case basis, considering the provisions of section 101(f) of the Act and the standards of the average citizen in the community. 8 C.F.R. § 204.2(c)(1)(vii). Unless a VAWA petitioner establishes extenuating circumstances, they will be found to lack good moral character if they committed unlawful acts that adversely reflect upon their moral character, although the acts do not require an automatic finding of lack of good moral character. *Id.* As explained in policy guidance, USCIS generally examines the three-year period immediately preceding the date the VAWA petition is filed; however, if there is evidence that a self-petitioner's conduct or acts do not fall under the enumerated grounds at section 101(f) of the Act but are contrary to the standards of the average citizen in the community, we consider all of the evidence in the record to determine whether the self-petitioner has established their good moral character. *See 3 USCIS Policy Manual D.2(G)(1)*, <https://www.uscis.gov/policy-manual>. Primary evidence of the petitioner's good moral character is their affidavit, which should be accompanied by local police clearances or state-issued criminal background checks from each of the petitioner's residences during the three years before the petition was filed. 8 C.F.R. § 204.2(c)(2)(v).

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Although USCIS must consider "any credible evidence" relevant to the VAWA petition, we determine, in our sole discretion,

the credibility of and the weight to give to that evidence. *See* section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i).

II. ANALYSIS

The record reflects that the Petitioner, a native of Ivory Coast and a citizen of France, entered the United States in April 2015 on a business visa. He filed a VAWA petition in May 2017 based on a claim of battery and extreme cruelty by his U.S. citizen spouse, H-¹. He filed the instant VAWA petition based on the same claim in February 2019. The VAWA petition included two self-affidavits describing his relationship with H-, six affidavits from friends and family in support of his application, and a copy of the self-affidavit he submitted with a previous VAWA petition that was denied in January 2019. The Petitioner's submissions largely related to supporting his claim of a good faith marriage with H-, which was the reason for the denial of his previous VAWA petition.

The Director subsequently issued a request for evidence (RFE) for, among other items, more evidence that the Petitioner was a person of good moral character as required. Specifically, the RFE requested more information regarding the Petitioner's criminal history in the United States after a fingerprint analysis revealed that he had been arrested on [REDACTED] 2017; [REDACTED] 2020; and [REDACTED] 2020. The Petitioner submitted a response in October 2020 that included a letter stating that he requested police clearances but that they would not arrive until October 2020. He additionally submitted a Certificate of Disposition from [REDACTED] Criminal Court in [REDACTED] New York indicating that he had been arrested on [REDACTED] 2020, and charged with violations of the following offenses: third-degree sexual abuse under section 130.55 of New York (N.Y.) Penal Law, second-degree harassment under section 240.26(1) of N.Y. Penal Law, and forcible touching and touching the sexual/intimate parts of another person under section 130.52(1) of N.Y. Penal Law. The Certificate also indicates that the final dispositions of these charges were "covered" by the Petitioner's guilty plea to and subsequent conviction for disorderly conduct under section 240.20 of N.Y. Penal Law. According to the Certificate, on [REDACTED] 2020, the Petitioner was sentenced to "conditional discharge." Further, the Petitioner submitted a document related to an order of protection which indicates that, due to the Petitioner's conviction for disorderly conduct, he was ordered not to contact or approach a person named C-H- and to surrender weapons in his possession. Finally, the Petitioner submitted letters from friends and family attesting to his good moral character.

The Director denied the VAWA petition, determining that the Petitioner had not demonstrated that he was a person of good moral character, as required, because of his criminal history. Specifically, the Director found that the Petitioner's administrative record indicated he was arrested three times, including one for battery in [REDACTED] 2017 for which he did not submit an explanation. While the Director acknowledged that the Petitioner submitted a personal statement, third party affidavits, and financial information in support of his claim of good moral character, the Director observed that the Petitioner's personal statement did not attest to whether he had been arrested, charged, or convicted for any crime in or outside the United States. Finally, the Director noted that the Petitioner had not submitted police clearances to establish good moral character.

¹ We use initials to protect the privacy of individuals.

On appeal, the Petitioner submits several handwritten personal statements and additional documentary evidence. He argues that he has established good moral character and states that he has never been arrested, charged, or convicted for any crime, nor has he ever had to deal with the police, outside of the United States. Regarding the arrest in [] 2017, he claims that he was relapsing from bipolar disorder and in a manic episode when he “involuntarily” went to his landlord’s door and “kept knocking” because his treatment had not been working, and his doctor subsequently adjusted his dose. The landlord called the police, but the Petitioner claims that he did not attack or touch her, nor was he aggressive towards her, and that he was not arrested and did not have a court hearing. He contends that he is a good person and regrets the incident. In a statement about the [] 2020, arrest, the Petitioner argues that the case was resolved and ruled as a violation rather than a crime and thus “should not appear here”. Turning to the [] 2020, arrest, he again contends that he was experiencing a manic episode from bipolar disorder and talked about his company and colleagues on LinkedIn and “had inappropriate words”. He states that the incident only took place on the Internet, that he did not touch anyone, and that he was not arrested, judged, or convicted for any charge.

In addition to the Petitioner’s personal statements on appeal, he provides medical documents dated [] 2017 indicating diagnoses of schizoaffective disorder and insomnia and meeting standards for involuntary commitment, specifically “[s]ubstantial danger to self or others” and that “[o]utpatient services have not been successful and hospital treatment is thought to be needed in order to prevent harm to self or others or to treat behavior that is no longer tolerable to society”. He also submits new letters from three associates describing the Petitioner as a good person who is honest, kind, respectful, generous, and trustworthy and has never been involved in any criminal activity. An additional letter from a former employer further asserts that the Petitioner is a hard worker and a nice and caring person; the employer also states that the Petitioner does not have a criminal history to her knowledge. Finally, the Petitioner submits a Certificate of Conduct from the [] Police Department indicating that a fingerprint search revealed that he had been arrested twice: on [] 2020 for forcible touching and touching the sexual/intimate parts of another person under section 130.52(1) of N.Y. Penal Law and on [] 2020 for aggravated harassment under section 240.26(1) of N.Y. Penal Law.

As previously stated, USCIS evaluates a VAWA petitioner’s claim of good moral character on a case-by-case basis, considering the provisions of section 101(f) of the Act and the standards of the average citizen in the community. 8 C.F.R. § 204.2(c)(1)(vii). Unless a VAWA petitioner establishes extenuating circumstances, they will be found to lack good moral character if they committed unlawful acts that adversely reflect upon their moral character, although the acts do not require an automatic finding of lack of good moral character. *Id.* Although USCIS generally examines the three-year period immediately preceding the date the VAWA petition is filed, if there is evidence that a self-petitioner’s conduct or acts do not fall under the enumerated grounds at section 101(f) of the Act but are contrary to the standards of the average citizen in the community, we consider all of the evidence in the record to determine whether the self-petitioner has established their good moral character. See 3 *USCIS Policy Manual* D.2(G)(1). <https://www.uscis.gov/policy-manual>.

Here, the Petitioner has not overcome the Director’s determination that he did establish the requisite good moral character for VAWA petitioners. In the instant case, while we acknowledge that the Petitioner contends for the first time on appeal that some of his criminal history is due to his bipolar disorder and that the submitted evidence suggests that he may have received or sought treatment, the

Petitioner has nevertheless not established that he is a person of good moral character. First, as a general matter, the Petitioner's arrests suggest that he has committed unlawful acts that reflects adversely on his moral character. 8 C.F.R. § 204.2(c)(1)(vii). In addition to his conviction for disorderly conduct, the charges for which the Petitioner was arrested indicate that he may have engaged in harassment and sexual abuse. Second, the record is neither clear nor consistent about facts surrounding the Petitioner's arrests. The Petitioner's statements, including as supplemented on appeal, do not address the protection order or his charges for sexual offenses; his explanations of the other arrests do not provide sufficient probative detail about his behavior and the events that led to them. The Petitioner's statements also differ from evidence in the record; most notably, his claim on appeal that he was not arrested or convicted for charges from [REDACTED] 2020, when the police certificate he submits explicitly states that he was. The Petitioner has not explained the reason for these inconsistencies, nor has he provided documentary evidence of mitigating factors that clearly explain his criminal history or why he has not been more forthcoming with USCIS. Finally, although the Petitioner has provided letters of support from associates attesting that they believe him to be a law-abiding person, these letters are brief and general in nature. They do not describe the extent of their relationship with the Petitioner nor do they not indicate any awareness of his arrests. They are accordingly given limited weight, particularly in light of the strong evidence in the record to the contrary.

A petitioner must establish that they meet each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, petitioners must show their claims are "more likely than not" or "probably" true. To determine whether a petitioner has met their burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Petitioner has not satisfied his burden due to significant discrepancies in the record regarding his arrests. The record, in its totality, suggests that the Petitioner has not been entirely forthcoming with USCIS about his criminal history, and that his conduct falls below the standard of the average person in the community. Consequently, the Petitioner has not established that he is a person of good moral character, and he has not demonstrated his eligibility for immigrant classification under VAWA.

ORDER: The appeal is dismissed.